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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of: Anderson et al.

Attorney Docket No. 01-3569

Application No: 09/458,353

Examiner: Mei, Xu

Filed: December 9, 1999

Art Unit: 2644

Title: Headset with Memory

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Transmitted herewith is a Notice of Appeal in the above-identified application.
The fee has been calculated as shown below.

	Claims Remaining After Amendment	Highest Previously Paid For	Present Extra	Rate	FEE
Total Claims					\$ 0.00
Independent Claims					\$ 0.00
Total Fees					\$ 0.00

- ☒ Applicants hereby petition for a three month(s) extension of time to respond to the outstanding Office Action.
- ☒ Please charge \$1,520 (\$1,020 for three months extension of time and \$500 for this Notice of Appeal) to Deposit Account No. 50-2315 (Order No. **01-3569**). A copy of this sheet is enclosed.
- ☐ Enclosed is Credit Card Payment Form PTO-2038 authorizing a charge of \$_____.
- ☒ Applicants believe that no (additional) Extension of Time is required; however, if it is determined that such an extension is required, Applicants hereby petition that such an extension be granted and authorize the Commissioner to charge the required fees for an Extension of Time under 37 CFR 1.136 to Deposit Account No. 50-2315 (Order No. 01-3569).
- ☒ If the required fees are missing or any additional fees are required during the pendency of the subject application, please charge such fees or credit any overpayment to Deposit Account No. 50-2315 (Order No. **01-3569**). A copy of this sheet is enclosed.

Respectfully submitted,

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CERTIFICATE OF MAILING OR TRANSMISSION

I hereby certify that this correspondence is being deposited with the US Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, or facsimile transmitted to the U.S. Patent and Trademark Office on October 19, 2006.

Signed: 

Typed Name: Jung-hua Kuo

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Applicant requests review of the final rejection mailed on April 19, 2006 in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reason(s) stated on the attached sheets (3 pages).

Note: No more than five (5) pages may be provided.

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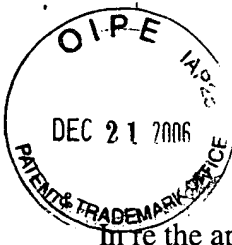
- ☒ attorney or agent of record. Registration Number 44,780.
☐ attorney or agent acting under 37 CFR 1.34. Registration Number _____.
☒ If the required fees are missing or any additional fees are required during the pendency of the subject application, please charge such fees or credit any overpayment to Deposit Account No. 50-2315 (Order No. **01-3569**). A copy of this sheet is enclosed.

Respectfully submitted,

October 19, 2006
Date



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PATENT

In re the application of: Anderson et al.

Application No: 09/458,353

Filed: December 9, 1999

Title: Headset with Memory

Atty. Dkt. No. 01-3569(PLANP035)

Examiner: Mei, Xu

Assignee: Plantronics, Inc.

Art Unit: 2644

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Signed: 

Name: Jung-hua Kuo

Reasons For Pre-Appeal Brief Request For Review

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The reasons for the Pre-Appeal Brief Request for Review are set forth below.

In rejecting claims 1-4, 6, 7, and 57-66 under 35 U.S.C. §103(a), the Examiner did not establish that Davis (USPN 6,201,875) in view of Zurek (USPN 5,764,778) renders the claimed inventions obvious

Claims 1-4, 6, 7, and 57-66 were under 35 USC §103(a) as being unpatentable over Davis in view of Zurek. However, the Examiner did not establish that Davis in view of Zurek discloses or suggests each and every element of the claimed invention to render the claims obvious.

However, each of independent claims 1, 57, 60, and 63 generally recites that the host adapter is configured to use the performance parameter (set in accordance with the headset preference setting) to process audio signals received from and/or transmitted to the headset.

Generally speaking, these claims address the situation where a host adapter (that processes the audio signals received by and/or transmitted to the headset) is used by various users at different times. Each user may have a different preference setting for the performance parameter of the host adapter such that host adapter may need to apply a different setting for the performance parameter for each user. It is the host adapter, not the headset, that uses the setting (stored in the headset's memory) for the performance parameter to process audio signals received from and/or transmitted to the headset.

In contrast, Davis discloses a hearing aid that communicates with a computer that merely provides a graphical user interface to facilitate the hearing aid user in inputting perceived loudness of tones. The computer does not receive or transmit audio signals to the hearing aid, much less process any such audio signals in accordance performance parameter setting stored in the hearing aid. Rather, it is the hearing aid that performs any and all audio processing. The computer merely facilitates in the programming of the hearing aid, i.e., setting the levels of the performance characteristics of the hearing aid. For example, Davis states that “the stimulus may either be generated by the hearing aid as a pure tone, or narrow band noise or be input from a microphone in the hearing aid.” (Col. 4, lines 61-63). As is evident, the stimulus (i.e., the audio used in testing the hearing of the user) is generated by the hearing aid, not by the computer.

Furthermore, Davis actually teaches away from having the computer perform audio signal processing. In particular, Davis notes the disadvantages of having the computer generate the audio used in testing the hearing of the user: “it is difficult to calibrate the output of the hearing-aid device to be worn by the individual to match the output of the headphones which were used to measure the hearing loss.” (Col. 2, lines 20-23). Thus, Davis not only provides no motivation to modify but actually teaches away from modifying the computer and the hearing aid of Davis such that the computer (rather than the hearing aid) performs the audio processing (to generate the stimuli) in accordance with the performance parameter setting.

Furthermore, Davis neither discloses nor suggests having settings for multiple users stored on the hearing aid. Davis merely discloses that the data sets for multiple fittings for a single user may be stored. In fact, Davis states that the “patient information for the hearing aid can also be stored” – a statement that is consistent with how hearing aids are used, that is, by a single user and not shared amongst multiple users.

The addition of the secondary reference Zurek does not overcome the deficiencies of Davis as discussed above.

Withdraw of the rejection of independent claims 1, 57, 60, and 63 as well as claims 2-4, 6, 7, and 58, 59, 61, 62, and 64-66, dependent various therefrom, under 35 USC §103(a) as being unpatentable over Davis in view of Zurek is respectfully requested.

In rejecting claims 73 and 74 under 35 U.S.C. §103(a), the Examiner did not establish that Davis (USPN 6,201,875) in view of Zurek (USPN 5,764,778) renders the claimed inventions obvious

Claims 73 and 74 were rejected under 35 USC §103(a) as being unpatentable over Davis in view of Zurek and further in view of Martin.

However, the deficiencies of Davis in view of Zurek as discussed above are not overcome with the addition of Martin. Thus, because claims 73 and 74 recite similar elements as discussed above with reference to independent claims 1, 57, 60, and 63, claims 73 and 74 are at least allowable for similar reasons as claims 1-7 and 57-66 are allowable as discussed above.

Withdraw of the rejection of claims 73 and 74 under 35 USC §103(a) as being unpatentable over Davis in view of Zurek and further in view of Martin is respectfully requested.

CONCLUSION

Because the Examiner's rejections of claims 1-4, 6, 7, and 57-66, 73, and 74 include legal deficiencies with regard to under 35 U.S.C. §103(a) and the MPEP, Applicants are entitled to a pre-appeal brief review of the final rejection. And based on the foregoing arguments, Applicants request that the rejection of these claims be withdrawn and the pending claims be allowed.

In the unlikely event that the transmittal letter accompanying this document is separated from this document and the Patent Office determines that an Extension of Time under 37 CFR 1.136 and/or any other relief is required, Applicant hereby petitions for any required relief including Extensions of Time and/or any other relief and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 50-2315 (Order No. 01-3569).

Respectfully submitted,



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